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Applicants:	Paul T. Van Gompel et al.	Docket No.:	19,577
Serial No.:	10/750,402	T.C./A.U.:	3761
Confirmation No.:	8997	Examiner:	Chapman, Ginger T
Filed:	December 31, 2003	Date:	May 7, 2008
For:	DUAL-LAYERED DISPOSABLE GARMENT		

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6 total pages, including this page

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Reply Brief

This reply brief is submitted pursuant to 37 C.F.R. 41.41 and in response to the Examiner's Answer dated March 12, 2008.

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Serial No. 10/750,402

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Status of Claims

Claims 34, 38, 39, 43-45 and 48-51 remain in the application with claims 34, 38, 39, 43-45 and 48-51 being finally rejected. Claims 1-33, 35-37, 40-42, and 46-47 were previously canceled. Claims 34, 38, 39, 43-45, and 48-51 are being appealed and are listed in the Claims Appendix of the Appeal Brief filed October 18, 2007.

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Grounds of Rejection to be Reviewed on Appeal

Ground 1

Claims 34, 38-39, 43-45 and 48-51 stand rejected under 35 U.S.C. § 103(a) as being obvious and thus unpatentable over U.S. Patent No. 6,193,701 to Van Gompel et al. (hereinafter "Van Gompel") issued February 27, 2001 in view of U.S. Patent Publication No. 2002/0072726 to Mishima et al. (hereinafter "Mishima").

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Argument

Ground 1

Claims 34, 38-39, 43-45, and 48-51 stand rejected under 35 U.S.C. § 103(a) as being obvious and thus unpatentable over Van Gompel in view of Mishima. The Appellants respectfully submit that the Examiner's rejection is improper and should be reversed with respect to claims 34, 38-39, 43-45, and 48-51 as presented in the Brief on Appeal filed October 18, 2007.

Additionally, Appellants respectfully disagree with the assertion quoted below and presented on page 9 of the Examiner's Answer dated March 12, 2008.

The examiner is not modifying the liner of Van Gompel, the examiner is adding the inner layer defining an opening as taught by Mishima to the garment of Van Gompel, such that the opening defined by the inner layer of Mishima is located adjacent the skin-facing side of the liner of the absorbent assembly of Van Gompel. (emphasis added).

However, Appellants note that in both the final office action (page 3) and in the Examiner's Answer (page 4) the following assertion was made.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the inner layer of Van Gompel defining an opening as taught by Mishima.... (emphasis added).

It is evident, therefore, that the Examiner proposed modifying the inner layer of Van Gompel not adding an additional layer as is now asserted. Thus, no *prima facie* case of obviousness has been established for at least this reason.

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Conclusion

Therefore, in addition to the reasons set forth in Appellants' Appeal Brief, the rejections of the claims on appeal are submitted to be in error for the additional reason set forth above and should be reversed by the Board. Appellants do not believe that any fee is due. However, the Commissioner is hereby authorized to charge any deficiency or overpayment of any fees to Deposit Account No. 11-0875. The undersigned may be reached at 920-721-3016.

Respectfully submitted,

PAUL T. VAN GOMPEL ET AL.

By:



David J. Arteman, Attorney for Appellants
Registration No. 44,512